

## **INITIAL STATEMENT OF REASONS**

Government Code section 12930, subdivision (f)(1)-(2), grants the Department of Fair Employment and Housing (DFEH or department) the function and power to receive, investigate, and conciliate complaints of discriminatory practices made unlawful by the Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.), the Unruh Civil Rights Act (Civ. Code, § 51), the Ralph Civil Rights Act (Civ. Code, § 51.7), and the Disabled Persons Act (Civ. Code, § 54 et seq.). Article 1 of Chapter 6 of the FEHA sets forth the general procedure for enforcement by the department of the FEHA's prohibition against unlawful employment practices. (Gov. Code, §§ 12960 through 12976.) (Article 1 also is applicable to Unruh and Ralph Civil Rights Acts and Disabled Person Act complaints filed with the department.) Article 2 of Chapter 6 of the FEHA sets forth the general procedure for enforcement by the department of the FEHA's prohibition against housing discrimination. (Gov. Code, §§ 12980 through 12989.3.)

When it was created by the Legislature in 1980, the DFEH also was granted the statutory authority to adopt regulations to carry out its duties and functions. To date, the department has not adopted the regulations the Legislature contemplated, although it has developed procedures of general application (DFEH Directives) for processing complaints of discrimination filed by members of the public. Many of the department's procedures of general application fall outside any express statutory exemption to the rulemaking requirements of the Administrative Procedure Act (APA) (Gov. Code, § 11340 et seq.) and APA Regulations (Cal. Code Regs., tit. 1, §§ 1-280).

The purpose of these proposed regulations is to provide duly noticed and vetted procedures of general application for participation in the DFEH administrative process. In most cases, the proposed regulations capture existing procedures currently utilized by the department. Where applicable, the proposed regulations will replace currently controlling DFEH Directives.

The specific purpose for each of the department's proposed procedural regulations is explained in full below.

## **TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS.**

The department did not rely on any technical, theoretical, or empirical studies, reports, or documents in proposing the adoption of its regulations.

## **REASONABLE ALTERNATIVES TO THE REGULATIONS AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES**

The proposed regulations capture existing procedures utilized by the department. To date, no other alternatives were presented to or considered by the department. The department invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearings or during the written comment period.

## **REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESSES**

The proposed regulations capture existing procedures utilized by the department for accepting, investigating, and conciliating complaints of employment, housing, and public accommodation discrimination and incidents of hate violence filed against individuals and businesses. The proposed regulations impose no duties or obligations not already imposed by existing law. Thus, the department anticipates that the regulations should not impose any adverse impact on small businesses. To the contrary, adoption of the proposed regulations is anticipated to benefit small and large businesses alike by clarifying the department's procedure and making it easier for individuals and businesses named in complaints to participate in proceedings before the department. Because the department does not anticipate any adverse impact to small businesses, it has not identified any alternatives that would lessen such impact.

## **EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS**

The department anticipates that adoption of the proposed regulations will have no significant statewide adverse economic impact directly affecting business. The proposed regulations capture existing procedures utilized by the department. It is anticipated that no additional costs beyond those imposed by the existing statute, Government Code section 12900 et seq., and existing procedures utilized by the department, will be imposed. To the contrary, adoption of the proposed regulations is anticipated to benefit businesses throughout the state by clarifying and streamlining the department's procedure, thereby making it easier and less costly for businesses named in complaints to participate in proceedings before the department.

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**Detailed reasons for each of the department's proposed procedural regulations are set forth below:**

**Section 10000. Statement of Purpose**

Government Code section 12930(f) grants the department the function and power to receive, investigate, and conciliate hate crime complaints and complaints of discriminatory practices in employment, housing, and public accommodations. Government Code sections 12960 through 12976 and 12980 through 12989.3 set forth the general procedures by which the department enforces the FEHA's prohibition against discriminatory practices. Government Code section 12930(e) authorizes the department to adopt suitable rules and regulations to carry out its functions and duties.

This regulation articulates that, along with the applicable provisions of the Fair Employment and Housing Act itself, the department's procedural regulations comprise the rules governing all proceedings before the department.

**Section 10001. Definitions**

This regulation defines terms commonly used throughout the department's procedural regulations. The defined terms include:

**Section 10001, Subsection (a) - Accusation**

This section defines an accusation as the charging document issued by the department pursuant to section 12965 or 12981 of the Government Code. The department's proposed definition is the same as that adopted by the Fair Employment and Housing Commission in its procedural regulations.

**Section 10001, Subsection (b) - Authorized signature**

This section articulates who may sign a verified complaint of discrimination on behalf of a complainant.

**Section 10001, Subsection (c) - Commission**

This section states that "commission" means the Fair Employment and Housing Commission, and is the same definition adopted by the commission in its procedural regulations.

#### **Section 10001, Subsection (d) - Complainant**

This section defines a complainant as a person claiming to be aggrieved by a practice unlawful under any of the laws the department enforces, who files a complaint of discrimination with the department.

#### **Section 10001, Subsection (e) – Complaint**

This section states that “complaint,” as used in the department’s procedural regulations, means a complaint of discrimination filed with the department.

#### **Section 10001, Subsection (f) – Conciliation**

This section defines conciliation as including pre-determination settlement negotiations, mediation conferences, and post-investigation conciliation and/or settlement conferences utilized by the department to resolve complaints of discrimination filed with the department.

#### **Section 10001, Subsection (g) – Continuing Violation**

This section describes a “continuing violation” as a series of similar acts, at least one of which occurs inside the applicable limitations period, which violate the FEHA.

#### **Section 10001, Subsection (h) - Co-respondent**

This section articulates that “co-respondent” means an entity or individual, who may share liability with a primary respondent for an alleged violation of a law the department enforces, and against whom a complaint of discrimination has been filed with the department.

#### **Section 10001, Subsection (i) – Department**

This section clarifies that when used throughout the proposed regulations, “department” means the Department of Fair Employment and Housing and includes any officer, employee, or other individual delegated any function, power, or duty of the department.

#### **Section 10001, Subsection (j) – Departmental Appeal**

This section describes the process by which an aggrieved party may request that the department reconsider its rejection of the aggrieved party’s complaint or closure of his or her case.

### **Section 10001, Subsection (k) – Director**

This section clarifies that when used throughout the proposed regulations, “director” means the director of the Department of Fair Employment and Housing and includes any officer, employee, or other individual delegated any function, power, or duty of the director.

### **Section 10001, Subsection (l) – District or Regional Administrator**

This section defines “district or regional administrator” as any employee, officer, or other individual delegated the authority to supervise the staff and day-to-day operations of one or more department district, field or regional office(s).

### **Section 10001, Subsection (m) – District Office**

This section defines “district office” as any field, local, or regional office of the department supervised by a district and/or regional administrator, employee, officer or other individual delegated the authority to supervise investigatory staff and their day-to-day operations.

### **Section 10001, Subsection (n) – File or To File**

This section states that except for complaints created on the Internet via the Department’s automated right-to-sue notice, a complaint is “filed” with the department when it is date-stamped “received” by the department.

### **Section 10001, Subsection (o) – Housing Accommodation**

This section restates the definition of “housing accommodation” set forth in Government Code section 12927(d).

### **Section 10001, Subsection (p) - Protected Activity**

This section incorporates the non-exhaustive list of examples of “opposition to practices forbidden by the [FEHA]” set forth in the commission’s regulations under Retaliation. (Cal. Code Regs., tit. 2, § 7287.8.)

### **Section 10001, Subsection (q) - Protected Basis**

This section defines “protected basis” as any basis or characteristic upon which discrimination is prohibited by the FEHA, the Unruh Civil Rights Act, the Ralph Civil Rights Act, or any other law the department enforces.

### **Section 10001, Subsection (r) – Registered Complaint**

This section explains that a “registered complaint” means a filed complaint

to which the department has assigned a department case file number.

### **Section 10001, Subsection (s) – Respondent**

This section defines “respondent” as an entity or individual alleged to have committed a practice made unlawful by a statute the department enforces, and against whom a complaint of discrimination has been filed with the department.

### **Subchapter 1. Employment, Unruh Civil Rights Act, Ralph Civil Rights Act, and Disabled Persons Act Complaints**

#### **Section 10002. Filing a Complaint of Employment Discrimination with the Department**

Government Code section 12960(b) authorizes any person claiming to be aggrieved by an alleged unlawful employment practice to file a verified complaint of discrimination with the department stating “the name and address of the person, employer, labor organization, or employment agency alleged to have committed the unlawful practice complained of, *...that shall set forth the particulars thereof and contain other information as may be required by the department.*” [Emphasis added.] Government Code section 12960(d) provides the statute of limitations, and limited circumstances when this period may be extended, for filing a complaint of discrimination with the department.

This regulation clarifies and makes specific the “particulars” mentioned in Government Code section 12960(b) that must be included in a complaint of employment discrimination filed with the department. The regulation also specifies the “other information” the department requires a complainant of employment discrimination include. The proposed regulation also: (1) expressly incorporates the statute of limitations, and limited circumstances when this period may be extended, set forth in Government Code section 12960(d); (2) alerts the reader that sections 10006 and 10018 of the department’s proposed regulations also allow for extension of the limitations period; and (3) sets forth the procedure for determining the date a complaint has been filed with the department (“filing date”).

#### **Section 10003. Liberal Construction of Complaints**

Government Code section 12920 declares “as the public policy of this state that it is necessary to protect and safeguard the right and opportunity of all persons to seek, obtain, and hold employment without discrimination” on account of any basis or characteristic listed in the FEHA. Government Code section 12921(a) declares that the opportunity to seek, obtain and hold employment without discrimination is a civil right. Government Code section 12930(f)(1) gives the department the power to receive, investigate, and conciliate complaints

alleging practices made unlawful by the FEHA, while section 12960(b) gives to any person claiming to be aggrieved by an alleged unlawful employment practice the right to file a complaint of discrimination with the DFEH. Section 12993(a) of the Government Code provides that the provisions of the FEHA prohibiting discrimination shall be “construed liberally for the accomplishment of the purposes” of the FEHA.

This regulation implements, interprets, and makes specific sections 12920, 12921(a), and 12993(a) of the Government Code in their application to the construction of complaints of employment discrimination filed with the department.

#### **Section 10004. Categories of Employment Discrimination Complaints Accepted by the Department for Filing**

Government Code section 12930(f)(1) gives the department the power to receive, investigate, and conciliate complaints alleging practices made unlawful by the FEHA, while section 12960(b) gives to any person claiming to be aggrieved by an alleged unlawful employment practice the right to file a complaint of discrimination with the DFEH.

This regulation clarifies and makes specific section 12960 of the Government Code by articulating the three categories of employment discrimination complaints accepted for filing by the department: (1) complaints filed for investigation; (2) complaints taken for filing purposes only, which are not investigated; and (3) complaints filed to request an immediate right-to-sue.

#### **Section 10005. Obtaining a Right-to-Sue Notice From the Department**

Government Code section 12965(b) provides that if the DFEH does not issue an accusation “within 150 days after the filing of a complaint, or if the department earlier determines that no accusation will issue,” the department must notify the employment discrimination complainant that it will issue a right-to-sue notice to him or her upon request. The statute further provides that if the complainant does not request a right-to-sue notice, the department is required to issue the notice upon completion of its investigation, and not later than one year after the filing of the complaint.

This regulation clarifies that a complainant may forgo having the department investigate his or her complaint of employment discrimination and instead obtain an immediate right-to-sue. The proposed regulation also specifies the procedures for requesting an immediate right-to-sue notice from the department. Additionally, the regulation clarifies that, when the notice has not earlier been requested, the department must issue a right-to-sue notice at the completion of its investigation or one year after the complaint is filed, whichever occurs first.

**Section 10006.      Filing a Complaint with the Department Alleging a Violation of the Unruh Civil Rights Act, Ralph Civil Rights Act, or Disabled Persons Act**

Government Code section 12930(f)(2) gives the department the power to receive, investigate, and conciliate complaints alleging a violation of the Unruh Civil Rights Act (Civ. Code, § 51), the Ralph Civil Rights Act (Civ. Code, § 51.7), and the Disabled Persons Act (Civ. Code, § 54 et seq.). Civil Code sections 52(f) and 54.3(b) provide an individual aggrieved by an alleged violation of Civil Code sections 51, 51.7 and 54 et seq. the right to file a complaint of discrimination with the department.

This regulation implements, interprets, and makes specific Government Code section 12930(f)(2) by articulating the department's procedures that apply to Civil Code section 51, 51.7 and 54 complaints that do not allege housing discrimination over which the U.S. Department of Housing and Urban Development (HUD) has concurrent jurisdiction. This regulation also clarifies that the department does not issue a right-to-sue notice when it closes a complaint alleging a violation of Civil Code section 51, 51.7 or 54 as a complainant does not need a right-to-sue from the department to file a corresponding civil court action for the same alleged violation(s).

**Section 10007.      Intake**

Government Code section 12930(f)(1)-(2) gives the department the function and power to receive complaints alleging practices made unlawful by the FEHA, Unruh Civil Rights Act, Ralph Civil Rights Act or Disabled Persons Act. Sections 52(f) and 54.3(b) of the Civil Code and section 12960(b) of the Government Code give to any person victimized by employment discrimination, or a violation of Civil Code section 51, 51.7 or 54, the right to file a complaint of discrimination with the DFEH. Government Code section 12960(b) articulates some of the particulars a complainant must include in a complaint of discrimination filed with the department. Government Code section 12960(d) provides the statute of limitations, and limited circumstances when this period may be extended, for filing an employment or Civil Code section 51, 51.7 or 54 complaint with the department.

This regulation implements sections 12930(f) and 12960(b) & (d) of the Government Code by articulating: (1) the department's intake procedure for complainants alleging employment discrimination or a violation of Civil Code section 51, 51.7 or 54 et seq.; (2) the process for making an intake appointment with the department as a precursor to filing with the department a complaint alleging employment discrimination or a violation of Civil Code section 51, 51.7 or 54 et seq.; and (3) the information a complainant must provide the department



prior to intake so the department may determine whether it has jurisdiction over the complainant's allegations.

#### **Section 10008. Priority Intake**

This regulation further implements sections 12930(f) and 12960(b) & (d) of the Government Code by articulating the circumstances under which the department may give a particular complainant priority over other complainants for the purpose of scheduling an intake appointment.

#### **Section 10009. Drafting Complaints Filed for Investigation**

Government Code section 12930(f)(1)-(2) gives the department the function and power to receive and investigate complaints alleging employment practices made unlawful by the FEHA and violations of the Unruh and Ralph Civil Rights Acts and Disabled Persons Act. Civil Code sections 52(f) and 54.3(b) as well as Government Code section 12960(b) authorize any person claiming to be aggrieved by an alleged unlawful employment practice or Unruh or Ralph Civil Rights Acts or Disabled Persons Act violation to file a verified complaint of discrimination with the department. Government Code section 12960(b) also articulates some of the particulars that must be included in the complaint.

This regulation implements, interprets, and makes specific Government Code sections 12930(f) and 12960(b) by articulating that: (1) it is the department that shall draft the language of each complaint filed with it for investigation; (2) the complaint shall be taken on a complaint form prescribed by the department; (3) the complaint shall contain all the information identified in section 12960(b) of the Government Code and sections 10002 and 10007 of the department's regulations; (4) the complaint shall set forth the allegations in ordinary and concise language of the department's choosing; and (5) the department shall liberally construe the facts alleged by a complainant when drafting a complaint and include all relevant claims supported by the facts alleged.

#### **Section 10010. Written Statement or Correspondence as Complaint**

This regulation further implements, clarifies, and makes specific Government Code sections 12930(f) and 12960(b) & (d) by articulating the limited circumstances that may lead the department to initially accept a written statement or correspondence from a complainant, in lieu of a complaint on a form prescribed by the department, for filing.

#### **Section 10011. Complaints Taken For Filing Purposes Only**

This regulation further implements, interprets, and makes specific Government Code sections 12930(f)(1) and 12960(b) by articulating the procedure applicable when the department must reject at intake all or some of

the allegations presented by an individual who seeks to file an employment discrimination complaint for investigation by the department.

#### **Section 10012. Director's Complaints**

Government Code section 12960(b) authorizes the director of the DFEH to make, sign, and file a verified complaint of discrimination stating the name and address of the person, employer, labor organization, or employment agency alleged to have committed an unlawful employment practice. Pursuant to Government Code section 12961, where an alleged unlawful employment practice adversely affects in a similar manner, or raises questions of law or fact common to, a group or class of applicants or employees, the director may file the complaint on behalf and as representative of such a group or class.

This regulation implements, interprets, and makes specific Government Code sections 12960(b) and 12961 by articulating the department's procedure governing director's complaints alleging employment discrimination, including a non-exhaustive list of factors the department may consider when determining whether to file a director's complaint.

#### **Section 10013. Class Complaints**

Pursuant to Government Code section 12961, where an alleged unlawful employment practice adversely affects in a similar manner, or raises questions of law or fact common to, a group or class of applicants or employees of which the aggrieved person is a member, the aggrieved person or the director may file a complaint on behalf and as representative of such a group or class. Government Code section 12965(a), pertaining to accusations, provides that "for any complaint treated by the director as a group or class complaint for purposes of investigation, conciliation, and accusation pursuant to Section 12961, an accusation shall be issued, if at all, within two years after the filing of the complaint."

This regulation implements, interprets, and makes specific Government Code sections 12961 and 12965(a) by articulating the department's procedure governing class complaints alleging employment discrimination, including a non-exhaustive list of factors the department may consider when determining whether to file a class complaint.

#### **Section 10014. Retaliation Complaints – Special Considerations**

Government Code section 12930(f)(1) gives the department the function and power to receive and investigate complaints alleging employment practices made unlawful by the FEHA, while section 12960(b) authorizes any person claiming to be aggrieved by an alleged unlawful employment practice to file a verified complaint of discrimination with the department. Under

Government Code section 12940(h), it is an unlawful employment practice to retaliate against any person because the person has opposed any practices the FEHA forbids, or because the person has filed a complaint, testified, or assisted in any proceeding before the DFEH or Fair Employment and Housing Commission.

This regulation implements, interprets, and makes specific sections 12930(f)(1) and 12960(b) of the Government Code, in their application to allegations of retaliatory employment practices, by articulating the department's filing procedure for retaliation complaints.

#### **Section 10015. Disability Complaints – Special Considerations**

Government Code section 12930(f)(1) gives the department the function and power to receive and investigate complaints alleging employment practices made unlawful by the FEHA, while section 12960(b) authorizes any person claiming to be aggrieved by an alleged unlawful employment practice to file a verified complaint of discrimination with the department. Under Government Code section 12940(a), it is an unlawful employment practice to discriminate against an applicant or employee because of his or her disability. Similarly, under Government Code section 12940(m), it is an unlawful employment practice to deny an applicant or employee with a disability a reasonable accommodation.

This regulation implements, interprets, and makes specific sections 12930(f)(1) and 12960(b) of the Government Code, in their application to disability discrimination complaints, by articulating that complainants alleging physical or mental disability discrimination in the workplace must authorize the department in writing to request and obtain copies of all relevant medical information necessary to evaluate and prosecute a disability discrimination or denial of reasonable accommodation claim.

#### **Section 10016. Standard for Accepting Complaint When Act of Harm Occurred Outside California**

This regulation further implements, interprets, and makes specific sections 12930(f)(1) and 12960(b) of the Government Code by articulating that, where all other jurisdictional requirements have been met for filing a complaint for investigation with the department, and the act of harm occurred outside California, the department shall accept the complaint if a connection can be established between the complainant and some act of the respondent that occurred within California.

#### **Section 10017. Effect of Prior Waiver Agreement/Release of All Claims**

Government Code section 12920 recognizes that “the practice of denying employment opportunity and discriminating in the terms of employment...

deprives the state of the fullest utilization of its capacities for development and advancement, and substantially and adversely affects the interest of employees, employers, and the public in general.” Section 12920 also states that it is the purpose of the FEHA “to provide effective remedies that will eliminate these discriminatory practices.” Government Code section 12930(f)(1) gives the department the power to receive, investigate, and conciliate complaints alleging practices made unlawful by the FEHA, while section 12960(b) gives to any person claiming to be aggrieved by an alleged unlawful employment practice the right to file a complaint of discrimination with the DFEH.

This regulation implements, interprets and makes specific the application of Government Code section 12920 to sections 12930(f)(1) and 12960(b) of the Government Code by articulating the factors the department considers when determining whether to pursue a complaint when a complainant has executed a prior valid waiver or release of all claims. Such factors include, but are not limited to, whether the complaint alleges an unlawful systemic policy or practice that adversely affects a large number of employees.

#### **Section 10018. Complaints Taken After Expiration of Statute of Limitation Due to Department Error**

Government code section 12960(d) provides that no complaint of discrimination may be filed with the department “after the expiration of one year from the date upon which the alleged unlawful practice or refusal to cooperate occurred, except that this period may be extended” under the limited circumstances 12960(d) specifies. In *Dept. Fair Empl. & Hous. v. Cairo*, the Fair Employment and Housing Commission held that the one-year statute of limitation for filing a complaint also may be tolled when the department misleads a complainant about filing obligations, commits errors in processing a complaint for filing, or improperly discourages or prevents a complainant from filing at all. (*Dept. Fair Empl. & Hous. v. Cairo* (Jan. 6, 1984) No. 84-04, FEHC Precedential Decs.1984-85, CEB 3 [1984 WL 54284 (Cal.F.E.H.C.)].)

This regulation implements and makes specific the application of the Commission’s holding in *Dept. Fair Empl. & Hous. v. Cairo* to the statute of limitations set forth in Government Code section 12960(d).

#### **Section 10019. Complaints Dual-filed with EEOC**

The department has a work-sharing agreement with the U.S. Equal Employment Opportunity Commission (EEOC) pursuant to which the EEOC pays the department a specified amount per complaint for processing complaints of employment discrimination over which the EEOC has concurrent jurisdiction. Such complaints are given both an EEOC and a DFEH case number and are, thus, “dual-filed.”

This regulation implements, interprets and makes specific the application of Government Code sections 12930(f)(1), 12960(b), and 12963 of the Government Code to: (1) the DFEH's receipt of complaints over which the EEOC has concurrent jurisdiction; and (2) the department's rejection of complaints where the same protected bases, discriminatory acts, and allegations have been included in a complaint the aggrieved party previously filed with the EEOC against the same respondent(s).

#### **Section 10020. Complaints Transferred to EEOC for Processing**

This regulation further implements, interprets and makes specific the application of Government Code sections 12930(f)(1), 12960(b), and 12963 of the Government Code to the DFEH's receipt of complaints over which the EEOC has concurrent jurisdiction. In particular, this regulation specifies the circumstances under which a complaint filed for investigation with the department may be transferred to the EEOC for investigation.

#### **Section 10021. Service of Complaints**

Government Code section 12962(a)-(b) instructs the department to serve verified complaints filed for investigation with the department by complainants who are not represented by counsel. Government Code section 12962(c) provides that service must be made at the time of initial contact with the respondent, or within sixty (60) days of filing, whichever occurs first.

This regulation clarifies section 12962 of the Government Code by articulating that the department may, but is not required, to also serve complaints filed for investigation by complainants who are represented by counsel, and complaints accepted for filing purposes only. This regulation further interprets section 12962 by expressly stating that the department does not serve complaints issued in response to requests for an immediate right-to-sue, regardless whether or not a complainant is represented by counsel. Further, this regulation implements, clarifies and makes specific section 12962 of the Government Code by articulating the department's procedure for initiating and effecting service.

#### **Section 10022. Amending Complaints**

Government Code section 12930(f)(1) gives the department the power to receive and investigate complaints alleging practices made unlawful by the FEHA, while section 12960(b) gives to any person claiming to be aggrieved by an alleged unlawful employment practice the right to file a complaint of discrimination with the DFEH.

This regulation implements, interprets and makes specific sections 12930(f)(1) and 12960(b) of the Government Code in their application to

complaint amendments. Specifically, this regulation articulates the circumstances and manners in which the department may amend a complaint of employment discrimination that has already been filed with the department.

### **Section 10023. Response to Complaint**

Section 12960(b) of the Government Code authorizes any person claiming to be aggrieved by an alleged unlawful employment practice to file a verified complaint of discrimination with the department. Government Code section 12930(f) empowers the department to investigate discrimination complaints; section 12963 directs the department “to make prompt investigation in connection therewith.”

This regulation implements, interprets and makes specific section 12963 of the Government Code by articulating that, unless granted an extension by the department, or another exception identified in the regulation applies, a written response to a complaint filed for investigation with the department must be provided to the department within thirty (30) days of service of the complaint.

### **Section 10024. Conciliation**

Government Code sections 12930(f) and 12963.7 authorize the department to conciliate complaints alleging unlawful employment practices or a violation of the Unruh Civil Rights Act, Ralph Civil Rights Act or Disabled Persons Act. Specifically, Government Code section 12963.7(a) provides that “if the department determines after investigation that a complaint is valid, the department shall immediately endeavor to eliminate the unlawful ... practice complained of by conference, conciliation, and persuasion.” The section further provides that “department staff shall not disclose what has transpired in the course of any endeavors to eliminate the unlawful ...practice through conference, conciliation, and persuasion.”

This regulation implements, interprets and makes specific section 12963.7 of the Government Code by articulating the various forms the department’s conciliation efforts may take, including, without limitation, pre-determination settlement negotiations and mediation conferences as well as post-investigation conciliation and/or settlement conferences. The regulation further specifies that although settlement negotiations are confidential, any settlement agreement signed by the department, as well as the terms of settlement, are not confidential. The regulation further articulates the department’s obligation to provide both complainants and respondents the opportunity to participate in a conciliation conference on equal terms if the department determines after investigation that a complaint has merit.

## **Section 10025. Complaint Investigation**

Government Code section 12930(f) empowers the department to investigate discrimination complaints; section 12963 directs the department to initiate investigation of employment discrimination complaints promptly. Pursuant to sections 12930(g) and 12963.1–12963.5 of the Government Code, in connection with any matter under investigation by the department, the department has the authority to issue subpoenas, take depositions, issue written interrogatories, and request production and inspection of documents and material things.

This regulation implements, clarifies and makes specific sections 12930(f)-(g), 12963, 12963.1-12962.5 of the Government Code by articulating that: (1) where it is disputed or unclear that the department has jurisdiction over a particular respondent or allegation, the investigation will initially focus on obtaining the information and documents necessary to determine whether the department has jurisdiction; (2) during the course of its investigation the department may, but is not required, to issue and serve investigative subpoenas, written interrogatories, and requests for production of books, records and documents; (3) the department shall gather during the course of an investigation all critical evidence necessary to determine whether an unlawful practice has occurred; and (4) the department will prioritize early in the investigative process complex cases and cases that appear to have merit to better allocate resources.

## **Section 10026. Investigative Subpoenas**

Pursuant to sections 12930(g) and 12963.1 of the Government Code, in connection with any matter under investigation by the department, the department has the authority to issue subpoenas to require the attendance and testimony of a witness “by deposition or *otherwise*.” [Emphasis added.]

This regulation implements, clarifies and makes specific sections 12930(g) and 12963.1 of the Government Code by articulating that the department’s authority to issue subpoenas includes the authority to issue investigative subpoenas for interviews. The regulation further implements, interprets and makes specific sections 12930(g) and 12963.1 of the Government Code by specifying the department’s procedure for issuing investigative subpoenas for interviews and conducting interviews pursuant to a subpoena.

## **Section 10027. Investigative Requests for Production and Inspection**

Pursuant to sections 12930(g) and 12963.4 of the Government Code, in connection with any matter under investigation by the department, the department has the authority to request the production for inspection and copying of books, records, documents, and “*physical materials*” in the possession or under the control of an individual or organization. [Emphasis added.]

This regulation implements, interprets and makes specific sections 12930(g) and 12963.4 of the Government Code by articulating that the “physical materials” the department has authority to inspect in connection with an investigation include land or other commercial or real property such as worksites or housing accommodations. The regulation also specifies that the department’s inspection authority extends to electronically stored information in the possession or under the control of an individual or organization. This regulation further implements, clarifies and makes specific sections 12930(g) and 12963.4 of the Government Code by specifying the department’s procedure for requesting production and inspection and the deadline for a respondent’s compliance.

#### **Section 10028. Priority Case Processing/Case Grading System**

Government Code section 12930(f)(1) empowers the department to receive, investigate, and conciliate complaints of unlawful practices in employment; section 12963 directs the department to initiate investigation of employment discrimination complaints promptly.

This regulation implements, interprets and makes specific sections 12930(f)(1) and 12963 of the Government Code by articulating the department’s implementation of a case grading system to prioritize investigations, better allocate resources, and facilitate collaboration between the department’s enforcement and legal divisions early in the investigative process. The regulation further implements, clarifies and makes specific sections 12930(f)(1) and 12963 of the Government Code by identifying a non-exhaustive list of factors the department may consider when prioritizing complaint investigations. The regulation further articulates that initial designations or case grades shall continually be re-evaluated by the department throughout the investigative process, and that at no time will the department disclose to any person outside the department the case grade or designation assigned to any complaint.

#### **Section 10029. Investigations Not Completed Within Statutory Time Limit**

Government Code section 12965(a) provides that “for any complaint treated by the director as a group or class complaint ..., an accusation shall be issued, if at all, within two years” after the complaint was filed with the department. For any complaint alleging a violation of Section 51.7 of the Civil Code, section 12965(a) requires that if an accusation will be issued, the department must do so within two years after the complaint was filed. “For all other complaints, an accusation shall be issued, if at all, within one year after the filing of a complaint.”

This regulation implements, interprets and makes specific section 12965(a) of the Government Code by articulating the department’s procedure for



continued investigation in the limited instances where it has not been able to complete an investigation within its statutory time limit. This regulation further specifies that although the department may not issue an accusation when an investigation is completed after the statutory time limit, and a complaint has been found meritorious, the department may, in its discretion, issue a director's complaint.

### **Section 10030. Receipt of Confidential Information**

Government Code section 12932(b) states that "the department shall hold confidential any information acquired in the regular performance of its duties upon the understanding that it would be so held." Likewise, pursuant to Evidence Code section 1040, a public entity has a privilege to refuse to disclose information acquired in confidence by a public employee in the course of his or her duty.

This regulation implements, interprets and makes specific section 12932(b) of the Government Code by articulating the department's procedure for maintaining the confidentiality of information a department employee acquires in the course of his or her duties, with the agreement that the information will not be released to anyone but department staff.

### **Section 10031. Accusation**

Government Code section 12930(h) empowers the department to issue accusations and to prosecute those accusations before the Fair Employment and Housing Commission. Pursuant to Government Code section 12965(a), "[i]n the case of failure to eliminate an unlawful [employment] practice ...through conference, conciliation, or persuasion, ...the director in his or her discretion may cause to be issued in the name of the department a written accusation."

This regulation implements, interprets and makes specific section 12965(a) of the Government Code by articulating a non-exhaustive list of factors the department may consider when determining whether the issuance of an accusation is warranted.

### **Section 10032. Notice of Case Closure**

Government Code section 12965(b) provides that if the DFEH does not issue an accusation "within one-hundred-fifty (150) days after the filing of a complaint, or if the department earlier determines that no accusation will issue," the department must notify the party aggrieved by an unlawful employment practice that it will issue a right-to-sue notice to the complainant upon his or her request. The statute further provides that if the complainant does not request a right-to-sue notice, the department is required to issue the notice upon completion of its investigation, and not later than one year after the filing of the

complaint. Pursuant to Government Code section 12971, “[i]f... after a complaint has been served on a respondent, the complaint is withdrawn by the complainant or dismissed by the department, or an investigation is terminated or closed by the department, notice of this fact shall be given to the respondent and the complainant without undue delay.”

This regulation implements, interprets and makes specific sections 12965(a) and 12971 of the Government Code by articulating that, for complaints alleging unlawful employment practices forbidden by the FEHA for which a right-to-sue notice has not already been issued, a notice of case closure also constitutes a right-to-sue notice. The regulation further articulates that the department will provide any complainant whose case it closes a list of resources for locating private counsel or filing a civil complaint in small claims court. The regulation further specifies that when closing a complaint dual-filed with the EEOC, the department must satisfy all reporting requirements arising from its work-sharing agreement with the EEOC.

### **Section 10033. Departmental Appeal**

Government Code section 12960(b) authorizes any individual who has been aggrieved by an unlawful employment practice to file a complaint of discrimination with the department. Similarly, sections 52(f) and 54.3(b) of the Civil Code authorize any person aggrieved by a violation of the Unruh or Ralph Civil Rights Acts or Disabled Persons Act to file a complaint of discrimination with the department. Pursuant to Government Code section 12971, whenever the department closes a complaint after it has been served on a respondent, it must give prompt notice of this fact to both the complainant and respondent.

This regulation implements, interprets, and makes specific section 12971 of the Government Code by articulating the process by which an aggrieved party may request that the department reconsider its rejection of the aggrieved party’s complaint or closure of his or her case.

### **Section 10034. EEOC Substantial Weight Review**

This regulation further interprets, clarifies and makes specific section 12971 of the Government Code by articulating the right of a party aggrieved by the department’s closure of a complaint dual-filed with the EEOC to request, within fifteen (15) days of the department’s case closure, that the EEOC conduct a substantial weight review in accordance with its own procedures.

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## **Subchapter 2. Housing Discrimination Complaints**

### **Section 10035. Filing a Complaint of Housing Discrimination with the Department**

Government Code section 12980(a) authorizes any person claiming to be aggrieved by an alleged unlawful housing practice to file a verified complaint of discrimination with the department stating “the name and address of the person alleged to have committed the violation complained of,...set forth the *particulars of the alleged violation and contain any other information required by the [D]epartment.*” [Emphasis added.] Government Code section 12980(b) provides the statute of limitations for filing a complaint of housing discrimination with the department.

This regulation clarifies and makes specific the “particulars” mentioned in Government Code section 12980(a) that must be included in a complaint of housing discrimination filed with the department. The regulation also specifies the “other information” the department requires a complainant of housing discrimination include. The proposed regulation also: (1) expressly incorporates the statute of limitations set forth in Government Code section 12980(b); (2) alerts the reader that sections 10037 and 10052 of the department’s proposed regulations allow for extension of the limitations period; and (3) sets forth the procedure for determining the date a complaint has been filed with the department (“filing date”).

### **Section 10036. Liberal Construction**

Government Code section 12920 declares that the practice of discrimination in housing on account of any basis or characteristic listed in the FEHA is against the public policy of this state. Government Code section 12921 declares that “[t]he opportunity to seek, obtain, and hold housing without discrimination” on account of any basis protected by the FEHA or section 51 of the Civil Code is a civil right. Government Code section 12930(f)(1)-(2) gives the department the power to receive, investigate, and conciliate complaints alleging practices made unlawful by the FEHA or Civil Code section 51, while section 12980(a) gives to any person claiming to be aggrieved by an alleged unlawful housing practice the right to file a complaint of discrimination with the DFEH. Section 12993(a) of the Government Code provides that the provisions of the FEHA prohibiting discrimination shall be “construed liberally for the accomplishment of the purposes” of the FEHA.

This regulation implements, interprets, and makes specific sections 12920, 12921(b), 12980(a) and 12993(a) of the Government Code in their application to construction of complaints of housing discrimination filed with the department.

**Section 10037. Filing a Housing Discrimination Complaint with the Department Alleging a Violation of the Unruh Civil Rights Act, Ralph Civil Rights Act, or Disabled Persons Act**

Government Code section 12930(f)(2) gives the department the power to receive, investigate, and conciliate complaints alleging a violation of the Unruh Civil Rights Act (Civ. Code, § 51), the Ralph Civil Rights Act (Civ. Code, § 51.7), and the Disabled Persons Act (Civ. Code, § 54 et seq.). Civil Code sections 52(f) and 54.3(b) provide an individual aggrieved by an alleged violation of Civil Code sections 51, 51.7 or 54 et seq. the right to file a complaint of discrimination with the department.

This regulation implements, interprets, and makes specific Government Code section 12930(f)(2) by articulating the procedures of the department that apply to Unruh or Ralph Civil Rights Acts and Disabled Persons Act housing discrimination complaints, depending upon whether the complaint also states allegations over which HUD has concurrent jurisdiction.

**Section 10038. Intake**

Government Code section 12930(f)(1)-(f)(2) gives the department the function and power to receive complaints alleging housing practices made unlawful by the FEHA, Unruh Civil Rights Act, Ralph Civil Rights Act or Disabled Persons Act. Sections 52(f) and 54.3(b) of the Civil Code and section 12980(a) of the Government Code give to any victim of housing discrimination the right to file a complaint of discrimination with the DFEH. Government Code section 12980(a) articulates some of the particulars a complainant must include in a complaint of housing discrimination filed with the department. Government Code section 12980(b) provides the statute of limitations.

This regulation implements sections 12930 and 12980(a) of the Government Code by articulating: (1) the department's intake procedure for complainants alleging housing discrimination; (2) the process for making an intake appointment with the department as a precursor to filing with the department a complaint alleging housing discrimination; and (3) the information a complainant must provide the department prior to intake so the department may determine whether it has jurisdiction over the complainant's allegations.

**Section 10039. Priority Intake**

This regulation further implements sections 12930 and 12980(a) of the Government Code by articulating the circumstances under which the department may give a particular complainant priority over other complainants for the purpose of scheduling an intake appointment.

## **Section 10040.      Testing**

Fair housing testers call or visit housing accommodations to inquire about vacancies. Although they pretend to be genuinely interested in renting or buying a home or apartment, their true purpose is to determine whether a property owner or manager is complying with fair housing laws. Evidence of fair housing testing is routinely admitted in cases filed under the federal Fair Housing Act and other anti-discrimination statutes. (*Inland Mediation Bd. v. City of Pomona* (2001) 158 F.Supp.2d 1120; *Havens Realty Corp. v. Coleman* (1982) 455 U.S. 363 [102 S.Ct. 1114, 71 L.Ed.2d 214].) However, section 12985 of the Government Code provides that whenever a member of the department's staff contacts a person against whom a complaint of housing discrimination has been filed, the person shall be informed whether the contact is for the purpose of investigation or conference, conciliation, or persuasion. The effect of Government Code section 12985 is to prohibit the department from contacting a respondent to conduct fair housing testing after a complaint of discrimination has been filed with the department against the respondent.

This regulation implements, interprets and clarifies section 12985 of the Government Code by articulating that department staff may conduct a telephone test during the intake of a housing discrimination complaint, before a complaint is filed, to test for discriminatory selection practices, without identifying themselves or the purpose of their inquiry. The regulation further specifies that if testing is desired by the department after a complaint is filed, a test may be conducted by a fair housing agency.

## **Section 10041.      Drafting Housing Discrimination Complaints**

Government Code section 12930(f)(1)-(2) gives the department the function and power to receive and investigate complaints alleging housing practices made unlawful by the FEHA, Unruh Civil Rights Act, Ralph Civil Rights Act and Disabled Persons Act. Civil Code sections 52(f) and 54.3(b) as well as Government Code section 12980(a) authorize any person claiming to be aggrieved by an alleged unlawful housing practice to file a verified complaint of discrimination with the department. Government Code section 12980(a) also articulates some of the particulars that must be included in the complaint.

This regulation implements, interprets, and makes specific Government Code sections 12930 and 12980(a) by articulating that: (1) it is the department that shall draft the language of each housing discrimination complaint filed with it; (2) the complaint shall be taken on a complaint form prescribed by the department; (3) the complaint shall contain all the information identified in section 12980(a) of the Government Code and sections 10035 and 10038 of the department's regulations; (4) the complaint shall set forth the allegations in ordinary and concise language of the department's choosing; and (5) the department shall liberally construe the facts alleged by a complainant when

drafting a complaint and include all relevant claims supported by the facts alleged.

#### **Section 10042. Written Statement or Correspondence as Complaint**

This regulation further implements, interprets, and makes specific Government Code sections 12930(f) and 12980(a) by articulating the limited circumstances that may lead the department to initially accept a written statement or correspondence from a complainant, in lieu of a complaint on a form prescribed by the department, for filing.

#### **Section 10043. Multiple Complainants**

This regulation further implements, interprets, and makes specific Government Code sections 12930(f) and 12980(a) by articulating the department's procedure for taking complaint(s) when more than one complainant has been aggrieved by the same unlawful housing practice.

#### **Section 10044. HUD-Generated Complaints**

This regulation further implements, clarifies, and makes specific Government Code sections 12930(f) and 12980(a) by articulating the department's procedure for filing complaints of housing discrimination that were initially filed with, and referred to the department for investigation by, HUD.

#### **Section 10045. Department-Generated Complaints**

This regulation further implements, clarifies, and makes specific Government Code sections 12930(f) and 12980(a) by articulating the department's procedure for referring to HUD for dual-filing all housing discrimination complaints originally filed with the department over which HUD has concurrent jurisdiction. The regulation further specifies that, unless otherwise directed by HUD, the responsibility for investigating complaints initially filed with the department that HUD accepts for dual-filing remains with the department.

#### **Section 10046. Director's Complaints**

Government Code section 12980(a) authorizes any person claiming to be aggrieved by an alleged unlawful housing practice to file a verified complaint of housing discrimination with the department. Government Code section 12980(c) instructs the department to "proceed upon [a housing discrimination] complaint in the same manner and with the same powers," commencing with Government Code section 12960, applicable to employment discrimination complaints. Government Code section 12960 authorizes the director of the DFEH to file a verified complaint of discrimination. Pursuant to Government Code section 12961, where an alleged unlawful practice adversely affects in a similar manner,

or raises questions of law or fact that are common to a group or class of persons of which the aggrieved person is a member, the director may file the complaint on behalf and as representative of such a group or class.

This regulation implements, interprets, and makes specific Government Code sections 12960-12961 and 12980(a) & (c) by articulating the department's procedure governing a director's complaint alleging housing discrimination, including a non-exhaustive list of factors the department may consider when determining whether to file a director's complaint.

#### **Section 10047. Class Complaints**

Government Code section 12980(a) authorizes any person claiming to be aggrieved by an alleged unlawful housing practice to file a verified complaint of housing discrimination with the department. Government Code section 12980(c) instructs the department to "proceed upon [a housing discrimination] complaint in the same manner and with the same powers," applicable to employment discrimination complaints. Pursuant to Government Code section 12961, where an alleged unlawful employment practice adversely affects in a similar manner, or raises questions of law or fact common to a group or class of applicants or employees of which the aggrieved person is a member, the aggrieved person or the director may file a complaint on behalf and as representative of such a group or class. Government Code section 12965(a), pertaining to accusations, provides that "for any complaint treated by the director as a group or class complaint for purposes of investigation, conciliation, and accusation pursuant to Section 12961, an accusation shall be issued, if at all, within two years after the filing of the complaint."

This regulation implements, interprets, and makes specific Government Code sections 12961, 12965(a) and 12980(a) & (c) by articulating the department's procedure governing class complaints alleging housing discrimination, including a non-exhaustive list of factors the department may consider when determining whether to file a class complaint.

#### **Section 10048. Retaliation Complaints – Special Considerations**

Government Code section 12930(f)(1) gives the department the function and power to receive and investigate complaints alleging housing practices made unlawful by the FEHA. Government Code section 12980(a) authorizes any person claiming to be aggrieved by an alleged unlawful housing practice to file a verified complaint of discrimination with the department. Under Government Code section 12955.7, it is unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of his or her right to housing free from discrimination, or on account of that person having aided or encouraged any other person in the exercise or enjoyment of the right to discrimination free housing.

This regulation implements, interprets, and makes specific sections 12930(f) and 12980(a) & (c) of the Government Code, in their application to allegations of retaliation in housing, by articulating the department's filing procedure for retaliation complaints.

#### **Section 10049. First Amendment Policy**

This regulation further implements, clarifies, and makes specific sections 12930(f) and 12980(a) & (c) of the Government Code, by articulating the department's procedure for identifying—and its procedure for receiving, investigating and conciliating—housing discrimination complaints that implicate First Amendment rights.

#### **Section 10050. Disability Complaints – Special Considerations**

Government Code section 12930(f)(1) gives the department the function and power to receive and investigate complaints alleging housing practices made unlawful by the FEHA, while section 12980(a) authorizes any person claiming to be aggrieved by an alleged unlawful housing practice to file a verified complaint of discrimination with the department. Under Government Code section 12955, it is an unlawful housing practice to discriminate against any person because of his or her disability. Pursuant to Government Code section 12927(c)(1), discrimination includes refusal to make reasonable accommodations in rules, policies, practices, or services when to do so is necessary to afford a person with a disability equal opportunity to use and enjoy a housing accommodation.

This regulation implements, interprets, and makes specific sections 12930(f) and 12980(a) of the Government Code, in their application to disability discrimination complaints, by articulating that complainants alleging physical or mental disability discrimination in housing must authorize the department to request and obtain copies of all relevant medical information necessary to evaluate and prosecute a disability discrimination or denial of reasonable accommodation claim.

#### **Section 10051. Effect of Prior Waiver Agreement/Release of All Claims**

Government Code section 12920 declares that the practice of discrimination in housing accommodations is against public policy. Section 12920 also states that it is the purpose of the FEHA “to provide effective remedies that will eliminate these discriminatory practices.” Government Code section 12930(f)(1) gives the department the power to receive, investigate, and conciliate complaints alleging practices made unlawful by the FEHA, while section 12980(a) gives to any person claiming to be aggrieved by an alleged unlawful housing practice the right to file a complaint of discrimination with the DFEH.



This regulation implements, interprets and makes specific the application of Government Code section 12920 to sections 12930(f)(1) and 12980(a) by articulating the factors the department considers when determining whether to pursue a complaint when a complainant has executed a prior valid waiver or release of all claims. Such factors include, but are not limited to, whether the complaint alleges an unlawful systemic policy or practice that adversely affects a large number of tenants or applicants.

#### **Section 10052. Complaints Taken After Expiration of Statute of Limitation Due to Department Error**

Government Code section 12980(a) provides that no housing discrimination complaint may be filed with the department after the expiration of one year from the date on which the unlawful practice occurred or terminated. In *Dept. Fair Empl. & Hous. v. Cairo*, the Fair Employment and Housing Commission held that the one-year statute of limitation for filing a complaint may be tolled when the department misleads a complainant about filing obligations, commits errors in processing a complaint for filing, or improperly discourages or prevents a complainant from filing at all. (*Dept. Fair Empl. & Hous. v. Cairo* (Jan. 6, 1984) No. 84-04, FEHC Precedential Decs.1984-85, CEB 3 [1984 WL 54284 (Cal.F.E.H.C.)].)

This regulation implements and makes specific the application of the commission's holding in *Dept. Fair Empl. & Hous. v. Cairo* to the statute of limitations set forth in Government Code section 12980(a).

#### **Section 10053. Service of Complaints**

Government Code section 12986 directs the department to serve a verified complaint of housing discrimination within ten (10) days after it has been filed with the department.

This regulation implements, interprets and makes specific Government Code section 12986 by articulating the department's procedure for initiating and effecting service of housing discrimination complaints.

#### **Section 10054. Amending Complaints**

Government Code section 12930(f)(1) gives the department the power to receive and investigate complaints alleging practices made unlawful by the FEHA, while section 12980(a) gives to any person claiming to be aggrieved by an alleged unlawful housing practice the right to file a complaint of discrimination with the DFEH.

This regulation implements, interprets and makes specific sections 12930(f)(1) and 12980(a) of the Government Code in their application to complaint amendments. Specifically, this regulation articulates the circumstances and manners in which the department may amend a complaint of housing discrimination that has already been filed with the department.

#### **Section 10055. Response to Complaint**

Pursuant to Government Code section 12986, a respondent who has been served with a verified housing discrimination complaint may file a response to the complaint with the department.

This regulation implements, interprets and makes specific Government Code section 12986 by articulating that unless granted an extension by the department or an automatic stay due to participation in the department's mediation program, a response to a housing discrimination complaint must be provided to the department within twenty (20) days of service of the complaint.

#### **Section 10056. Conciliation**

Government Code sections 12930(f) and 12984 authorize the department to conciliate complaints alleging unlawful housing practices. Further, Government Code section 12984 provides that "the members of the department and its staff shall not disclose to any person what has transpired in the course of such endeavors to conciliate." Pursuant to section 12980(i) of the Government Code, however, "[a]ll agreements reached in settlement of any housing discrimination complaint ... shall be made public, unless otherwise agreed by the complainant and respondent, and the department determines that the disclosure is not required to further the purposes of the act."

This regulation implements, interprets and makes specific sections 12980(i) and 12984 of the Government Code by articulating the various forms the department's conciliation efforts may take, including, without limitation, pre-determination settlement negotiations and mediation conferences as well as post-investigation conciliation and/or settlement conferences. The regulation further specifies that although settlement negotiations are confidential, any settlement agreement signed by the department, as well as the terms of settlement, are not confidential. The regulation further articulates the department's obligation to provide both complainants and respondents the opportunity to participate in a conciliation conference on equal terms if the department determines after investigation that a complaint has merit.

#### **Section 10057. Complaint Investigation**

Government Code section 12930(f) empowers the department to investigate discrimination complaints. Government Code section 12980(c)

instructs the department to “proceed upon [a housing discrimination] complaint in the same manner and with the same powers” applicable to employment discrimination complaints. Section 12963 of the Government Code directs the department to initiate investigation of employment discrimination complaints promptly. Pursuant to sections 12930(g) and 12963.1–12963.5 of the Government Code, in connection with any matter under investigation by the department, the department has the authority to issue subpoenas, take depositions, issue written interrogatories and request production and inspection of documents and physical things.

This regulation implements, interprets and makes specific sections 12930(f)-(g), 12963, 12963.1-12962.5 and 12980(c) of the Government Code by articulating that: (1) where it is disputed or unclear that the department has jurisdiction over a particular respondent or allegation, the investigation will initially focus on obtaining the information and documents necessary to determine whether the department has jurisdiction; (2) during the course of its investigation the department may, but is not required, to issue and serve investigative subpoenas, written interrogatories, and requests for production of books, records and documents; (3) the department shall gather during the course of an investigation all critical evidence necessary to determine whether an unlawful housing practice has occurred; (4) the department will prioritize early in the investigative process complex cases and cases that appear to have merit to better allocate resources.

#### **Section 10058. Investigative Subpoenas**

Government Code section 12980(c) instructs the department to “proceed upon [a housing discrimination] complaint in the same manner and with the same powers” applicable to employment discrimination complaints. Pursuant to sections 12930(g) and 12963.1 of the Government Code, in connection with any matter under investigation by the department, the department has the authority to issue subpoenas to require the attendance and testimony of a witness “by deposition or *otherwise*.” [Emphasis added.]

This regulation implements, interprets and makes specific sections 12930(g) and 12963.1, and 12980(c) of the Government Code by articulating that the department’s authority to issue subpoenas applies to housing discrimination complaints and includes the authority to issue investigative subpoenas for respondent or witness interviews. The regulation further implements, interprets and makes specific sections 12930(g), 12963.1 and 12980(c) of the Government Code by specifying the department’s procedure for issuing investigative subpoenas for interviews and conducting interviews pursuant to a subpoena.

## **Section 10059. Investigative Requests for Production and Inspection**

Government Code section 12980(c) instructs the department to “proceed upon [a housing discrimination] complaint in the same manner and with the same powers” applicable to employment discrimination complaints. Pursuant to sections 12930(g) and 12963.4 of the Government Code, in connection with any matter under investigation by the department, the department has the authority to request the production for inspection and copying of books, records, documents, and “*physical materials*” in the possession or under the control of an individual or organization. [Emphasis added.]

This regulation implements, interprets and makes specific sections 12930(g), 12963.4 and 12980(c) of the Government Code by articulating that the “physical materials” the department has authority to inspect in connection with an investigation of unlawful practices include land or other commercial or real property such as worksites or housing accommodations. The regulation also specifies that the department’s authority extends to electronically stored information in the possession or under the control of an individual or organization. This regulation further implements, interprets and makes specific sections 12930(g), 12963.4 and 12980(c) of the Government Code by specifying the department’s procedure for requesting production and inspection and the deadline for a respondent’s compliance.

## **Section 10060. Priority Case Processing/Case Grading System**

Government Code section 12930(f)(1) empowers the department to receive, investigate and conciliate complaints of unlawful practices in employment and housing. Government Code section 12980(c) instructs the department to “proceed upon [a housing discrimination] complaint in the same manner and with the same powers” applicable to employment discrimination complaints. Section 12963 of the Government Code directs the department to initiate investigation of employment discrimination complaints promptly.

This regulation implements, interprets and makes specific sections 12930(f)(1), 12963, and 12980(c) of the Government Code by articulating the department’s implementation of a case grading system to prioritize investigations, better allocate resources, and facilitate collaboration between the department’s enforcement and legal divisions early in the investigative process. The regulation further implements, interprets and makes specific sections 12930(f)(1) and 12963 of the Government Code by identifying a non-exhaustive list of factors the department may consider when prioritizing complaint investigations. The regulation further articulates that initial designations or case grades shall continually be re-evaluated by the department throughout the investigative process, and that at no time will the department disclose to any person outside the department the case grade or designation assigned to any complaint.

## **Section 10061.      Investigations Not Completed Within Statutory Time Limit**

Government Code section 12980(f) provides that the investigation of a complaint of housing discrimination filed with the department must be completed within one-hundred (100) days, “unless it is impractical to do so.” Similarly, Government Code section 12981(a) provides that “[a]n accusation alleging an unfair housing practice shall be issued within 100 days after the filing of a complaint *unless it is impracticable to do so.*” [Emphasis added.] Pursuant to Government Code sections 12981(a) and 12965(a), when it is impracticable for the department to complete its investigation of an unfair housing practice and issue an accusation within one-hundred (100) days, the department may have up to one year for non-class complaints, and up to two years for class complaints, to issue an accusation.

This regulation implements, interprets and makes specific sections 12965(a), 12980(f) and 12981(a) of the Government Code by articulating the department’s procedure for continued investigation of housing discrimination complaints in the limited instances where it has not been able to complete an investigation within its statutory time limit. This regulation further specifies that although the department may not issue an accusation when an investigation is completed after the statutory time limit, and a complaint has been found meritorious, the department may, in its discretion, issue a director’s complaint.

## **Section 10062.      Receipt of Confidential Information**

Government Code section 12932(b) states that “the department shall hold confidential any information acquired in the regular performance of its duties upon the understanding that it would be so held.” Likewise, pursuant to Evidence Code section 1040, a public entity has a privilege to refuse to disclose information acquired in confidence by a public employee in the course of his or her duty.

This regulation implements, interprets and makes specific section 12932(b) of the Government Code by articulating the department’s procedure for maintaining the confidentiality of information a department employee acquires in the course of his or her duties, with the agreement that the information will not be released to anyone but department staff.

## **Section 10063.      Accusation**

Government Code section 12930(h) empowers the department to issue accusations and to prosecute those accusations before the commission. Pursuant to Government Code sections 12965(a) and 12981(a), “[i]n the case of failure to eliminate an unlawful practice ...through conference, conciliation, or

persuasion” the director is authorized to issue an accusation in the name of the department.

This regulation implements, interprets and makes specific sections 12965(a) and 12981(a) of the Government Code by articulating a non-exhaustive list of factors the department may consider when determining whether the issuance of an accusation is warranted.

#### **Section 10064. Notice of Case Closure**

Government Code section 12980(c) instructs the department to “proceed upon [a housing discrimination] complaint in the same manner and with the same powers” applicable to employment discrimination complaints. Pursuant to Government Code section 12971, pertaining to employment discrimination complaints, “[i]f... after a complaint has been served on a respondent, the complaint is withdrawn by the complainant ... or an investigation is closed by the department, notice of this fact shall be given to the respondent and the complainant without undue delay.”

This regulation implements, interprets and makes specific sections 12971 and 12980(a) of the Government Code by articulating that whenever a complaint of housing discrimination is withdrawn by the complainant or closed by the department, the department shall promptly notify the complainant and respondent of the case closure, and the reason for closure, in writing. The regulation further articulates that the department will provide any complainant whose case it closes a list of resources for locating private counsel or filing a civil complaint in small claims court. The regulation further specifies that when closing a complaint dual-filed with HUD, the department must satisfy all reporting requirements arising from its work-sharing agreement with the HUD.

#### **Section 10065. Departmental Appeal**

Government Code section 12980(a) authorizes any individual who has been aggrieved by an unlawful housing practice to file a complaint of discrimination with the department. Government Code section 12980(c) instructs the department to “proceed upon [a housing discrimination] complaint in the same manner and with the same powers” applicable to employment discrimination complaints. Pursuant to Government Code section 12971 pertaining to employment discrimination complaints, whenever the department closes a complaint after it has been served on a respondent, it must give prompt notice of this fact to both the complainant and respondent.

This regulation implements, interprets and makes specific sections 12971 and 12980 of the Government Code by articulating the process by which an aggrieved party may request that the department reconsider its rejection of the aggrieved party’s complaint or closure of his or her case.

## **Section 10066. Substantial Equivalence**

Pursuant to a work-sharing agreement between the DFEH and HUD, the FEHA must provide rights and remedies that are substantially equivalent to those afforded by the Fair Housing Amendments Act of 1988 (42 U.S.C. § 3601 et seq.) and its implementing regulations (24 CFR Parts 100 et seq.) for the department to retain HUD certification and continue to receive funding from HUD. Pursuant to Government Code section 12955.6, the FEHA may not be construed to afford fewer rights and remedies than those afforded under the federal Fair Housing Amendments Act and its implementing regulations, although it may be construed to provide greater rights and remedies.

This regulation implements, interprets and makes specific Government Code section 12955.6 by articulating that the provisions of the FEHA affording remedies to victims of housing discrimination must be construed to afford the same remedies as those afforded under the federal Fair Housing Amendments Act and its implementing regulations, unless those afforded by the FEHA are greater.